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8 *Allison, Broomfield, and Clark*

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13
14 **MICHAEL V. NICKERSON,**

15 Plaintiff,

16 v.

17 **RON BROOMFIELD, et al.,**

18 Defendants.

5:20-cv-06326-EJD (PR)

**DECLARATION OF ZEWUGEBERHAN
DESTA IN SUPPORT OF
DEFENDANTS' ADMINISTRATIVE
MOTION TO CHANGE TIME TO FILE
A DISPOSITIVE MOTION**

Judge: The Honorable Edward J. Davila
Trial Date: Not Set
Action Filed: September 9, 2020

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21 I, Zewugeberhan Desta, declare as follows:

22 1. I am an attorney admitted to practice before the courts of the State of California and
23 before this Court. I am employed by the California Attorney General's Office as a Deputy
24 Attorney General in the Correctional Law Section. I represent Defendants Allison, Broomfield,
25 and Clark. I am competent to testify to the matters set forth in this declaration and, if called upon
26 by this Court, would do so. I submit this declaration in support of Defendants' Motion to Change
27 Time to File a Dispositive Motion.
28

1 2. In its Order of Service dated August 10, 2021, the Court directed Defendants to file a
2 motion for summary judgment or other dispositive motion by November 9, 2021. (Order, ECF
3 No. 10 at 4.)

4 3. On September 23, 2021, I was assigned to represent Defendants Allison, Broomfield,
5 and Clark in this matter. Since September 23, I have been working up the case to develop a
6 motion for summary judgment. I have reviewed Plaintiff Nickerson's complaint, the Court's
7 order of service, and relevant prison central file (C-File) records; conducted legal research
8 regarding Nickerson's claims; requested additional documents and records from the San Quentin
9 State Prison Litigation Coordinator's Office; and requested Nickerson's inmate appeal records
10 from the Office of Appeals in Sacramento, California.

11 4. In addition to working on this case, I have been preparing for appearances and filings
12 in my other assigned cases, including the following:

13 - prepared defendant's motion for summary judgment in *Avina v. Koenig, et al.*, N.D.
14 Cal. No. 3:21-cv-02433-JD (PR), which I filed on October 19, 2021;

15 - prepared defendant's motion for summary judgment in *Tooker v. Mak, et al.*, N.D.
16 Cal. No. 5:20-CV-07373-LHK, which I filed on October 22, 2021;

17 - prepared for and took Plaintiff's deposition in *Tooker v. Mak, et al.*, N.D. Cal. No.
18 5:20-CV-07373-LHK;

19 - prepared defendants' reply in support of their motion for summary judgment in
20 *Cunningham v. Martinez*, E.D. Cal. No. 1:19-cv-01508-AWI-EPG, which I filed on October 4,
21 2021;

22 - prepared defendant's reply to Plaintiff's objections to magistrate judge's report and
23 recommendation on defendant's motion to dismiss in *Ajaelo v. Carrillo*, S.D. Cal. No. 3:20-cv-
24 02191-WQH-DEB, which I filed on October 19, 2021;

25 - prepared defendants' motion to stay discovery and motion to strike unauthorized sur-
26 reply in *Cunningham v. Martinez*, E.D. Cal. No. 1:19-cv-01508-AWI-EPG, which I filed on
27 October 14, and October 28, 2021 respectively;
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1 - prepared defendant's motion to strike unauthorized sur-reply in *Moffett v. Benefield*,
2 N.D. Cal. No. 3:20-cv-02051-EMC (PR), which I filed on October 21, 2021; and

3 - prepared defendants' motion to compel discovery and motion to bifurcate summary-
4 judgment briefing in *Tooker v. Mak, et al.*, N.D. Cal. No. 5:20-CV-07373-LHK, which I filed on
5 October 14, and October 15, 2021 respectively.

6 5. I need additional time to conduct discovery; confer with Defendants, and potential
7 inmate and staff witnesses who are familiar with Nickerson's claim and obtain declarations;
8 request additional documents from the prison; and prepare and file a motion for summary
9 judgment and any supporting declarations.

10 6. In light of these limitations, Defendants respectfully request a 76-day extension of
11 time to file a dispositive motion in this matter, such that Defendants' motion will be due by
12 January 24, 2022. I believe a 76-day extension of time is necessary to obtain discovery responses
13 from Nickerson; obtain documents and additional information from San Quentin; confer with
14 Defendants, staff, and inmate witnesses who are familiar with Nickerson's claims; and prepare
15 Defendants' motion for summary judgment and any supporting declarations. I also believe this
16 amount of time is necessary for me to arrange meetings with Defendants and witnesses in light of
17 additional restrictions at institutions because of the COVID-19 pandemic and my busy work
18 schedule.

19 7. This is Defendants' first request to change time to file a motion for summary
20 judgment or other dispositive motion. This request is not made for the purpose of harassment,
21 undue delay, or any improper reason. This requested extension of time will have minimal impact
22 on the case schedule, and no other deadlines will be affected.

23 8. I have not attempted to contact Plaintiff for a stipulation to extend time because he is
24 a pro-se state prison inmate who is not easily available by telephone. Because Plaintiff is an
25 inmate, it is also difficult to deliver this motion for an extension of time on the same day it is
26 filed. Thus, Defendants are serving it by the most expedient and cost-effective means available,
27 i.e., first-class mail.
28

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed on November 5, 2021, in Oakland, California.

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4 /s/ Zewugeberhan Desta
5 Zewugeberhan Desta
6 Deputy Attorney General

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CERTIFICATE OF SERVICE

Case Name: **M. Nickerson (F77522) v.
Broomfield, et al.**

No. **5:20-cv-06326-EJD (PR)**

I hereby certify that on November 5, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF ZEWUGEBERHAN DESTA IN SUPPORT OF DEFENDANTS'
ADMINISTRATIVE MOTION AND MOTION TO CHANGE TIME TO FILE A
DISPOSITIVE MOTION**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On November 5, 2021, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Michael Vaugh Nickerson
F-77522
San Quentin State Prison
San Quentin, CA 94964
In Pro Per

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 5, 2021, at Los Angeles, California.

D. Salao
Declarant



Signature